

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

<b>UNITED STATES OF AMERICA,</b>  <div style="text-align: center;"><b>Plaintiff,</b></div> <div style="text-align: center;"><b>vs.</b></div> <b>LAFONS SMITH,</b>  <div style="text-align: center;"><b>Defendant.</b></div>	) ) ) ) ) ) ) ) ) )	<b>CASE NO. 8:08CR186</b>   <b>TENTATIVE FINDINGS</b>
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The Court has received the Revised Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 32). The government adopted the PSR (Filing No. 29). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to ¶¶ 103 and 104, in which the probation officer states that no factors exist that may warrant a downward departure or a sentence outside the guidelines in light of the factors listed in 18 U.S.C. § 3553(a). The objections are denied. The Court notes that ¶¶ 103 and 104 reflect the probation officer’s opinion with respect to the matters stated in those paragraphs. Nevertheless, the Court is aware of the Defendant’s motion for downward departure and variance (Filing No. 30), which will be heard at sentencing.

**IT IS ORDERED:**

1. The Defendant’s Objections to the Presentence Investigation Report (Filing No. 32) are denied;
2. Otherwise the Court’s tentative findings are that the Presentence Investigation Report is correct in all respects;

3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final;

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and

6. The Defendant's motion for downward departure (Filing No. 30) will be heard at sentencing.

DATED this 26<sup>th</sup> day of January, 2009.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge